



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ LLC

Contact: ██████████, LLC
██████████

FINAL RULING NO. 2010-99
December 29, 2010

FINAL RULING

██████████ LLC ("██████████") has protested the Department's denial of its claim for refunds of ad valorem taxes it paid on its limestone reserves for the 2008 and 2009 tax years. See generally KRS 134.590(2). It should be noted that this denial relates to state ad valorem taxes in the amount of \$ ██████████ paid for 2008 and \$ ██████████ paid for 2009. Any claim or claims for the refund of ad valorem taxes paid to other taxing jurisdictions would need to be sought from those jurisdictions KRS 134.590(3)-(6); Board of Education of Fayette County v. Taulbee, 706 S.W.2d 827 (Ky. 1986).

Pursuant to KRS 132.820, the Department had previously assessed ██████████'s limestone reserves for ad valorem taxation. In accordance with KRS 132.820(5), ██████████ was notified of these assessments and given the opportunity to protest and appeal these assessments pursuant to the provisions of KRS Chapter 131. ██████████ did not protest these assessments and instead paid the taxes due. ██████████ later applied for a refund of the taxes paid by an application and amended returns that accompanied a letter dated ██████████, 2010. This application or refund claim asserted that the valuations represented by the assessments were in excess of fair cash value due to the use of a royalty rate that ██████████ now contends was too high.

The Department properly denied ██████████'s refund claim based upon the provision of the applicable refund statute, KRS 134.590(2), that states that "[n]o state government agency shall refund ad valorem taxes, except those held unconstitutional, unless the taxpayer has

properly followed the administrative remedy procedures established through the protest provisions of KRS 131.110, the appeal provisions of KRS 133.120, the correction provisions of KRS 133.110 and 133.130, or other administrative remedy procedure.” As noted above, it is undisputed that ██████████ did not take advantage of the opportunity to protest and appeal the assessments in question. See KRS 132.820(5). Under the plain and unambiguous language of KRS 134.590(2), it cannot now seek a refund of the taxes it paid based upon those assessments.

For the reasons stated above, the Department has properly denied the refunds of ad valorem taxes claimed by ██████████, LLC. ██████████’s protest of that denial is hereby disallowed.

This letter is the final ruling of the Department of Revenue.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner’s or appellant’s position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;

[REDACTED], LLC

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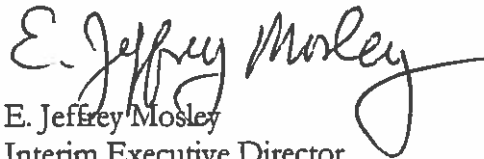
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3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,

FINANCE AND ADMINISTRATION CABINET



E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

cc:

